

**Supporting Statement for
Recordkeeping Requirements Associated with Regulation GG
(FR 4026; OMB No. 7100-0317)**

Summary

The Board of Governors of the Federal Reserve System (Board) proposes to extend for three years, without revision, the Recordkeeping Requirements Associated with Regulation GG (FR 4026; OMB No. 7100-0317). Regulation GG - Prohibition on Funding of Unlawful Internet Gambling (12 CFR Part 233) includes requirements for all non-exempt participants¹ to establish certain policies and procedures related to the Unlawful Internet Gambling Enforcement Act of 2006 (the Act).² The collection of information is set out in sections 5 and 6 of Regulation GG.³

Section 5 requires all non-exempt participants in the designated payment systems to establish and implement policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, transactions restricted by the Act. In addition, section 5 states that a participant in a designated payment system may rely on policies and procedures established by the designated payment system if the system's policies and procedures otherwise comply with the requirements of the regulation. Section 6 sets out non-exclusive examples of policies and procedures for each designated payment system that the Board and the Department of the Treasury (the agencies) believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in the system. The Board is taking paperwork burden for an estimated 5,520 depository institutions, card system operators, and money transmitting business operators for the regulation's requirement to establish and maintain the policies and procedures required by sections 5 and 6 of Regulation GG. The annual recordkeeping burden for establishing and maintaining these policies and procedures is estimated to be 44,436 hours.

Background and Justification

In general, the Act prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Such transactions are termed "restricted transactions." The Act generally defines "unlawful Internet gambling" as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise

¹ Section 4 of Regulation GG exempts four broad categories of participants: (1) those processing a transaction through an automated clearing house (with exception, as defined in the regulation), (2) those participating in a particular check collection through a check collection system, (3) those participating in a money transmitting business, and (4) those participating in a particular wire transfer through a wire transfer system. A non-exempt participant is defined as a participant in a designated payment system that does not meet any of the four exemptions.

² See 31 U.S.C. 5361 et seq.

³ Section 802 of the Act requires the agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions.

made.⁴ The Act states that its provisions should not be construed to alter, limit, or extend any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.⁵ The Act does not spell out which activities are legal and which are illegal, but rather relies on the underlying substantive Federal and State laws.

Description of Information Collection

The Act requires the agencies, in consultation with the U.S. Attorney General, to designate payment systems that could be used in connection with or to facilitate restricted transactions. Such a designation makes the payment system and non-exempt financial transaction providers participating in the system subject to the requirements of the regulation.⁶ The Act further requires the agencies, in consultation with the U.S. Attorney General, to prescribe regulations requiring designated payment systems and financial transaction providers participating in each designated payment system to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The regulations must identify types of policies and procedures that would be deemed to be reasonably designed to achieve this objective, including non-exclusive examples. The Act also requires the agencies to exempt certain restricted transactions or designated payment systems from any requirement imposed by the regulations if the agencies jointly determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

Under the Act, a participant in a designated payment system is considered to be in compliance with the regulations if it relies on and complies with the policies and procedures of the designated payment system and such policies and procedures comply with the requirements of the agencies' regulations. The Act also directs the agencies to ensure that transactions in connection with any activity excluded from the Act's definition of unlawful Internet gambling (qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions) are not blocked or otherwise prevented or prohibited by the prescribed regulations.

Sections 5 and 6 contain information collection requirements. Details of the requirements for each section are provided below.

⁴ From the general definition, the Act exempts three categories of transactions: (1) intrastate transactions (a bet or wager made exclusively within a single State, whose State law or regulation contains certain safeguards regarding such transactions and expressly authorizes the bet or wager and the method by which the bet or wager is made, and which does not violate any provision of applicable Federal gaming statutes), (2) intratribal transactions (a bet or wager made exclusively within the Indian lands of a single Indian tribe or between the Indian lands of two or more Indian tribes as authorized by Federal law, if the bet or wager and the method by which the bet or wager is made is expressly authorized by and complies with applicable Tribal ordinance or resolution (and Tribal-State Compact, if applicable) and includes certain safeguards regarding such transaction, and if the bet or wager does not violate applicable Federal gaming statutes), and (3) interstate horseracing transactions (any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.)).

⁵ See 31 U.S.C. 5361(b).

⁶ The Act defines "financial transaction provider" as a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network or other participant in a designated payment system.

Section 233.5. Section 5 of the final regulations requires all non-exempt participants in the designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, restricted transactions. In accordance with the Act, section 5 states that a non-exempt participant in a designated payment system shall be considered in compliance with this requirement if (1) it relies on, and complies with, the written policies and procedures of the designated payment system that are reasonably designed to identify and block restricted transactions or otherwise prevent or prohibit the acceptance of the products or services of the designated payment system in connection with restricted transactions and (2) such policies and procedures of the designated payment system comply with the requirements of this section. Regulation GG provides that, unless notified otherwise by its regulator, a participant may rely on a written statement or notice by the operator of the designated payment system to its participants that the operator has designed or structured the system's policies and procedures for identifying and blocking or otherwise preventing or prohibiting restricted transactions to comply with the requirements of Regulation GG.

Section 233.6. Section 6 of the final regulations sets out non-exclusive examples of policies and procedures the agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in each designated payment system. Under Regulation GG, non-exempt participants in each designated payment system should maintain policies and procedures that (1) address methods for conducting due diligence in establishing a commercial customer relationship designed to ensure that the commercial customer does not originate or receive restricted transactions through the customer relationship and (2) include procedures reasonably designed to prevent or prohibit restricted transactions, including procedures to be followed with respect to a customer if the participant discovers the customer has been engaging in restricted transactions through its customer relationship. Also, the participant may notify all of its commercial customers, through provisions in the account or commercial customer relationship agreement or otherwise, that restricted transactions are prohibited from being processed through the account or relationship.

Time Schedule for Information Collection

Non-exempt participants are required to maintain the policies and procedures for any particular designated payment system that they participate in.

Legal Status

The Board is authorized pursuant to section 802 of the Unlawful Internet Gambling Enforcement Act (31 U.S.C. 5364(a)) to prescribe regulations requiring designated payment systems and participants therein to establish of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions. The FR 4026 is mandatory. The policies and procedures are not required to be submitted to the Board, so normally no confidentiality issues would be implicated. To the extent such policies and procedures are obtained by the Board through the examination process, they may be kept confidential under exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)), which protects information contained in or related to an examination of a financial institution.

Consultation Outside the Agency

The Board has consulted with the Department of the Treasury regarding this information collection and the paperwork burden estimate.

On April 17, 2018, the Board and Department of the Treasury published a joint initial notice in the *Federal Register* (83 FR 16857) requesting public comment for 60 days on the extension, without revision, of the FR 4026. The comment period for this notice expired on June 18, 2018. The agencies did not receive any comments. The information collection will be extended as proposed and the agencies are publishing separate final notices. On August 20, 2018, the Board published a final notice in the *Federal Register* (83 FR 42121).

Estimate of Respondent Burden

The total annual burden for the FR 4026 is estimated to be 44,436 hours, as shown in the table below. The Board estimates that the burden of maintaining the policies and procedures once they are established is 8 hours per year for all recordkeepers. The Board estimates that the burden of maintaining the policies and procedures for de novo institutions is 100 hours per year. The agencies have agreed to split equally the total number of record-keepers not subject to examination and supervision by either the Board or the Treasury's Office of the Comptroller of the Currency. These recordkeeping requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

| FR 4026 | <i>Number of respondents⁷</i> | <i>Annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated annual burden hours</i> |
|---------------------------------------|--|-------------------------|---|--------------------------------------|
| Depository institutions | 2,628 | 1 | 8 | 21,024 |
| Card system operators | 7 | 1 | 8 | 56 |
| Credit unions | 2,839 | 1 | 8 | 22,712 |
| Money transmitting business operators | 43 | 1 | 8 | 344 |
| De novo institutions | 3 | 1 | 100 | <u>300</u> |
| <i>Total</i> | | | | 44,436 |

⁷ Of these respondents, 2,026 depository institutions, 2,597 credit unions, and 36 money transmitting business operators are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/document/support--table-size-standards.

The total cost to the public is estimated to be \$2,490,638.⁸

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for collecting this information is negligible.

⁸ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$18, 45% Financial Managers at \$69, 15% Lawyers at \$68, and 10% Chief Executives at \$94). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2017*, published March 30, 2018, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.